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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-979]

### Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Notice of Court Decision

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

#### SUMMARY:

On September 6, 2019, the Court of International Trade (CIT) entered its final judgment in *Sumecht NA, Inc. v. United States*, Court No. 17-00244, finding that the United States Department of Commerce (Commerce) erred in setting the effective date of its *Notice of Court Decision Not in Harmony with a Final Determination and Notice of Amendment Final Determination of Investigation Pursuant to Court Decision (Timken Notice)* pertaining to the antidumping duty (AD) investigation of certain crystalline silicon photovoltaic cells, whether or not assembled into modules (certain solar cells), from the People's Republic of China (China). Pursuant to the CIT's final judgment, the effective date of Commerce's *Timken Notice* relative to certain entries of subject merchandise exported by Sumec Hardware Tools Co., Ltd.'s (Sumec Hardware) is November 23, 2015, which is the date of publication of the *Timken Notice* in the *Federal Register*. Accordingly, Commerce intends to instruct U.S. Customs and Border Protection (CBP) to liquidate entries of subject merchandise exported by Sumec Hardware and produced by Phono Solar Technology Co., Ltd., and imported by Sumecht NA, doing business as Sumec North America (Sumecht), which were entered, or withdrawn from warehouse, for consumption on or after October 15, 2015, which is ten days after the CIT's decision, through

November 22, 2015, which is the day before the date of publication of Commerce's *Timken* Notice in the *Federal Register*, at the separate rate of 13.18 percent.

**DATES:** Applicable [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**FOR FURTHER INFORMATION CONTACT:** Krisha Hill, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4037.

**SUPPLEMENTARY INFORMATION:**

Background

Commerce initiated an AD investigation of certain solar cells from China on November 16, 2011.<sup>1</sup> In the investigation, Commerce assigned a separate AD rate of 24.48 percent to Sumec Hardware,<sup>2</sup> and determined a China-wide rate of 249.96 percent for exporters that did not demonstrate eligibility for separate-rate status. Commerce amended the *Final Determination* on December 7, 2012, which it published along with the AD order.

The U.S. domestic producers challenged the *Final Determination* before the CIT, including Sumec Hardware's separate-rate status. The CIT remanded the *Final Determination*, at Commerce's request, to re-examine the separate rates assigned to four respondents, including Sumec Hardware.<sup>3</sup> On remand, Commerce determined that Sumec Hardware did not meet the

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<sup>1</sup> See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Initiation of Antidumping Duty Investigation*, 76 FR 70960 (November 16, 2011).

<sup>2</sup> See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part*, 77 FR 63791 (October 17, 2012); see also *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order*, 77 FR 7,018 (December 7, 2012).

<sup>3</sup> *Jiangsu Jiasheng Photovoltaic Tech. Co. v. United States*, 28 F. Supp. 3d 1317, 1338-43 (Ct. Int'l Trade 2014)

criteria for a separate rate and found it to be part of the China-wide entity.<sup>4</sup>

While that litigation was pending before the CIT, in response to World Trade Organization (WTO) dispute settlement findings, and at the direction of the United States Trade Representative, Commerce implemented final determinations under Section 129 of the Uruguay Round Agreements Act (URAA) in several investigations, including the AD investigation of certain solar cells from China.<sup>5</sup> Pursuant to the Section 129 Implementation, Commerce revised Sumec Hardware's cash deposit rate to 13.18 percent for entries made on or after August 2, 2015, the effective date of the Section 129 Implementation. Commerce issued corresponding cash deposit instructions to CBP in October 2015.

On October 5, 2015, the CIT issued a confidential opinion sustaining Commerce's Remand Results in the *Jiangsu Jiasheng* litigation, including Commerce's determination assigning Sumec Hardware the China-wide rate.<sup>6</sup> Commerce published the *Timken* Notice following the final CIT judgment in *Jiangsu Jiasheng III* on November 23, 2015.<sup>7</sup> In the amended final determination, Commerce set the cash deposit rate for Sumec Hardware, now part of the China-wide entity, at 238.95 percent.<sup>8</sup> Commerce set the effective date for the *Timken* Notice as October 15, 2015, which was the tenth day after the CIT's decision.<sup>9</sup>

On December 30, 2015, in accordance with *Jiangsu Jiasheng III* and the associated

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(*Jiangsu Jiasheng*).

<sup>4</sup> See *Final Results of Redetermination Pursuant to Court Order, Jiangsu Jiasheng Photovoltaic Technology Co., Ltd. v. United States*, Consol. Court No. 13-00012 (April 20, 2015) (Remand Results).

<sup>5</sup> See *Implementation of Determinations Under Section 129 of the URAA*, 80 FR 48812 (August 14, 2015) (Section 129 Implementation).

<sup>6</sup> *Jiangsu Jiasheng Photovoltaic Tech. Co. v. United States*, 121 F. Supp. 3d 1263 (Ct. Int'l Trade 2015) (*Jiangsu Jiasheng III*). The CIT issued the public version of its decision on December 22, 2015. See the CIT's website, "Slip Opinions – 2015" (<https://www.cit.uscourts.gov/SlipOpinions/SlipOps-2015.html>).

<sup>7</sup> *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Determination of Investigation and Notice of Amended Final Determination of Investigation Pursuant to Court Decision*, 80 FR 72950 (November 23, 2015) (*Timken* Notice).

<sup>8</sup> *Id.*; see also Section 129 Implementation, 80 FR at 48818.

<sup>9</sup> *Id.*; see also section 516A(e) of the Tariff Act of 1930, as amended (the Act).

*Timken* Notice, Commerce issued amended cash deposit instructions to CBP, notifying CBP that Sumec Hardware was no longer eligible for a separate rate. Commerce instructed CBP to collect cash deposits at the China-wide entity rate, 238.95 percent, for shipments of subject merchandise produced by Phono Solar Technology Co., Ltd. and exported by Sumec Hardware that entered, or were withdrawn from warehouse, for consumption on or after “10/15/2015,” the tenth day after the Court’s October 5, 2015 decision in *Jiangsu Jiasheng III*.

On March 14, 2016, because no party requested a review of the China-wide entity or of Sumec Hardware for the period December 1, 2014 through November 30, 2015, Commerce issued automatic liquidation instructions to CBP. Commerce instructed CBP to liquidate entries during the specified period at the cash deposit in effect on the date of entry. For Sumec Hardware, this rate was 238.95 percent (*i.e.*, the rate that resulted from this Court’s decision in *Jiangsu Jiasheng III*).

On September 6, 2019, in a separate challenge – *Sumecht NA, Inc. v. United States* – the CIT held that Commerce erred in setting the effective date of the *Timken* Notice, amended cash deposit instructions, and automatic instructions to thirty-nine days before publication of the *Timken* Notice.<sup>10</sup> The CIT directed Commerce to “reliquidate” Sumec Hardware’s entries in a manner consistent with its opinion.<sup>11</sup>

#### Implementation of Court Decision

Consistent with the CIT’s final judgment in *Sumecht*, Commerce intends to instruct CBP to liquidate shipments of crystalline silicon photovoltaic cells, whether or not assembled into modules, from the China produced by Phono Solar Technology Co., Ltd., exported by Sumec

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<sup>10</sup> *Sumecht NA, Inc. v. United States*, 399 F. Supp. 3d 1370, 1379 (Ct. Int’l Trade 2019) (*Sumecht*).

<sup>11</sup> *Id.* CBP has not yet liquidated the affected entries. The liquidation of the entries has been enjoined as a result of an injunction that is in place with respect to litigation before the CIT involving a corresponding countervailing duty proceeding. See *Sumec Hardware & Tools Co., Ltd. v. United States*, Court No. 18-00186.

Hardware Tools Co., Ltd., and imported by Sumecht NA, doing business as Sumec North America, which were entered, or withdrawn from warehouse, for consumption on or after October 15, 2015 through November 22, 2015, at the separate rate implemented with respect to the AD investigation, as revised by the Section 129 Implementation, *i.e.*, 13.18 percent.

Dated: December 17, 2019.

**Jeffrey I. Kessler,**

*Assistant Secretary*

*for Enforcement and Compliance.*

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